FILED

AUG 30 2004

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAMUEL AROLA STRANGE, Petitioner - Appellant, v. **CAL TERHUNE, Director**, Respondent - Appellee.	No. 03-17197 D.C. No. CV-99-02293-EJG **MEMORANDUM**[*]

Appeal from the United States District Court
for the Eastern District of California
Edward J. Garcia, District Judge, Presiding

Submitted August 13, 2004[**]
San Francisco, California

Before: **PREGERSON** and **KOZINSKI**, Circuit Judges, and **RHOADES**,[***] District Judge.

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[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

[**] This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

[***] The Honorable John S. Rhoades, Sr., Senior Judge, United States District Court for the Southern District of California, sitting by designation.

The state courts were not objectively unreasonable in finding counsel's advice that petitioner not testify within "the wide range of professionally competent assistance." See Strickland v. Washington, 466 U.S. 668, 690 (1984). Counsel were concerned about the inconsistent story he had previously told his parents and the police, which could have been the subject of cross-examination had he testified. Moreover, at least one of petitioner's counsel was worried about potential cross-examination on petitioner's prior convictions. That counsel also believed that the state did not prove its case and that petitioner's own testimony would fill the gaps, providing a motive for the killings and conclusively placing him at the murder scene. Petitioner's other counsel thought it was a close call whether petitioner should testify, but ultimately agreed with his co-counsel.

In view of these tactical considerations, petitioner has not shown that the state courts "applied Strickland to the facts of his case in an objectively unreasonable manner." Woodford v. Visciotti, 537 U.S. 19, 25 (2002).

AFFIRMED.